

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Paul Hansen,

Complainant,

vs.

Emily White,

Respondents.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

To: Paul Hansen, 1925 – 10<sup>th</sup> Avenue, Newport, MN 55055 and Emily White, 870 – 17<sup>th</sup> Street, Newport, MN 55055.

On November 9, 2004, Paul Hansen filed a Complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.04 in pieces of campaign material distributed by Emily White. Ms. White was a candidate for reelection to the Newport City Council in the general election held on November 2, 2004. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of section 211B.04. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A

party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 10, 2004

s/Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

### MEMORANDUM

The relevant portions of the Fair Campaign Practices Act provide as follows:

211B.04 (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, ..... (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the ..... committee, ..... (address), in support of .....(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

. . . .

The Complaint alleges that the flyer was distributed by Ms. White to approximately 725 household as inserts to the *Southwest County Bulletin*. The flyer urges readers to vote for Emily White for Newport City Council. The flyer is written in the first person (e.g. "My name is Emily White"), giving the background and positions of Ms. White on a number of issues. The flyer lacks the disclaimer required by Minn. Stat. § 211B.04(a). While it prominently displays her name, no address is provided anywhere

on the flyer. Thus, the Complaint states a prima facie violation of Minn. Stat. § 211B.04. An evidentiary hearing is necessary to consider the alleged violation and determine what sanction, if any, may be appropriate.

S.M.M.